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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 134

REPUBLIC NATURAL GAS COMPANY,
Appellant,

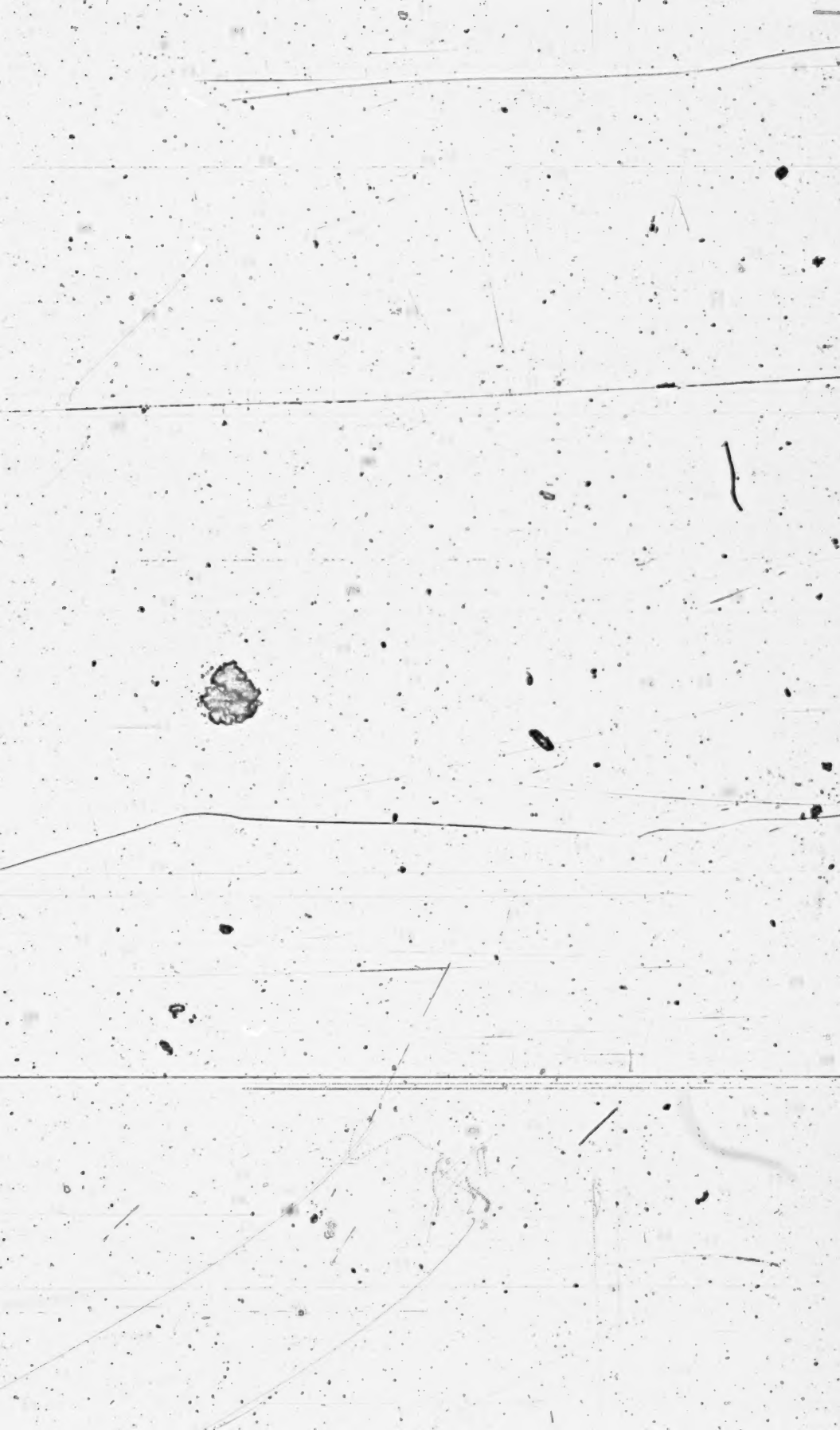
vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND PEERLESS OIL & GAS COMPANY

APPEAL FROM THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS

MAC Q. WILLIAMSON,
Attorney General of Oklahoma,
FLOYD GREEN,
Attorney for Corporation Commission of the State of Oklahoma,
EARL PRUET,
Counsel for Peerless Oil & Gas Company,
Counsel for Appellees.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 134

No. 32123

REPUBLIC NATURAL GAS COMPANY, A CORPORATION,
Appellant,

vs.

STATE OF OKLAHOMA, CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, AND PEERLESS OIL & GAS COMPANY, A CORPORATION,
Appellees

RESPONSE OF APPELLEES TO JURISDICTIONAL STATEMENT OF APPELLANT AND MOTION TO DISMISS OF APPELLEES.

Pursuant to the provisions of the applicable rules of the Supreme Court of the United States, the State of Oklahoma, the Corporation Commission of the State of Oklahoma and Peerless Oil & Gas Company, a corporation, appellees herein, file this, Appellees' Response to the Jurisdictional Statement of said Appellant and Appellees' Mo-

tion to Dismiss the appeal of the appellant, Republic Natural Gas Company, a corporation, for the following reasons:

I

There has been no final judgment in the highest court of the State of Oklahoma within the meaning of the applicable statute.

Section 344 of Title 82, U. S. Code upon which appellant attempts to predicate this appeal, provides in part as follows:

> "(a) A final judgment of decree in any suit in the highest court of the state * * *."

The attempted appeal, involved herein, arises out of an order of the Corporation Commission of the State of Oklahoma, which order provides in part as follows:

ORDER

> "IT IS THEREFORE ORDERED by the Corporation Commission of the State of Oklahoma as follows:
>
> "1. That the respondent, Republic Natural Gas Company, be, and it is hereby, required to take gas ratably from applicant's well known as Peerless Oil and Gas Company Crump No. 1, well, located in the Southwest Quarter (SW¼) of Section 14, Township 6 North, Range 15 East C. M., in Texas County, Oklahoma, in the Hugoton Oklahoma Gas Field, and to make necessary connection as soon as applicant lays a line connecting said well with respondent's line, and to continue to do so until the further order of this Commission; provided that, applicant shall lay its line from its well to the lines of respondent at some point designated by the respondent, but in said Section 14 in which said well of Peerless Oil and Gas Company has been drilled; and said respondent is required to make said designation immediately and without unreasonable delay, and in event of failure of respondent

to do so, respondent shall be no longer permitted to produce any of its wells located in the Hugoton Oklahoma Gas Field.

"2. The terms and conditions of such taking of natural gas by Republic Natural Gas Company from said Peerless Oil and Gas Company's well shall be determined and agreed upon by and between applicant and respondent; and in the event said parties are unable to agree, applicant and respondent are hereby granted the right to make further application to the Corporation Commission for an order fixing such terms and conditions; and the Commission retains jurisdiction hereof for said purpose."

The opinion of the Supreme Court of the State of Oklahoma involved herein is in part as follows:

"It required Republic and Peerless to determine and agree upon the terms and conditions of the taking of the gas of Peerless by Republic, and provided that in the event they could not reach an agreement they could make further application to the Commission for an order fixing such terms and conditions, and the Commission retained jurisdiction for that purpose."

"Neither did the order require Republic to become a common purchaser, since it gave Republic a choice between taking the gas from Peerless and paying therefor direct, or marketing the gas and accounting to Peerless therefor, or to shut in its own production from the same common source of supply. It was free to choose either of those three methods of correcting the inequality in taking and the consequent infringement of the correlative rights of Peerless."

The order of the Corporation Commission, as aforesaid, was a final and appealable order under the practice of the Corporation Commission of the State of Oklahoma and of the Supreme Court of said State. Such order was not, however, a final order within the meaning of the federal statute aforesaid. The Supreme Court of the United States has

many times held that a "final judgment" within the meaning of said statute is a judgment which fully adjudicates the rights of the parties and completely disposes of the subject matter of the litigation. The order of the Corporation Commission aforesaid clearly does not fully adjudicate the rights of the parties and completely dispose of the subject matter of the litigation. Such order therefore is not a final judgment within the meaning of the federal applicable statute, upon which appellant attempts to predicate its appeal herein. The decision of the Supreme Court of the State of Oklahoma, affirming the order of the Corporation Commission, involved herein, in effect remanded said matter to the Corporation Commission for further proceedings in the event the Republic Natural Gas Company, appellant herein, and Peerless Oil & Gas Company, one of the appellees herein, should fail to agree upon the terms and conditions of the taking. In the event said parties should thereafter be unable to agree upon the terms and conditions of the taking, then and in that event, the Corporation Commission of the State of Oklahoma would proceed to fully and finally adjudicate the rights of the parties and fully dispose of the subject matter of the litigation by fixing the terms and conditions of the taking. The order of the Corporation Commission and the decision of the Supreme Court of the State of Oklahoma do not, therefore, fully adjudicate the rights of the parties and completely dispose of the subject matter of the litigation. There has been, therefore, no final judgment within the meaning of the applicable federal statutes. *Heike* v. *United States*, 217 U. S. 423; *Louisiana Navigation Company, Ltd. v. Oyster Commission of Louisiana*, 226 U. S. 99; *Grays Harbor Logging Company, et al.* v. *Coats-Fordney Logging Company*, 243 U. S. 251; *Bruce, Administrator of Tobin, et al.* v. *Tobin*, 245 U. S. 18; *Georgia Railway & Power Company*,

et al. v. *Town of Decatur*, 262 U. S. 432; *Arnold* v. *Gurmarin & Co.*, 263 U. S. 427; *LaClede Gas Light Company* v. *Public Service Commission, et al.*, 304 U. S. 398; *Department of Banking of Nebraska, Receiver* v. *Pink, Superintendent of Insurance of the State of New York*, 317 U. S. 264; *Catlin, et al., Trustees* v. *U. S.*, 324 U. S. 229.

Until an order shall have been entered by the Corporation Commission of the State of Oklahoma fully adjudicating all the rights of the parties and fully disposing of the subject matter of the subject litigation, *i. e.*—fixing the terms and conditions of the taking of natural gas, the Supreme Court of the United States is in no position to say that such order is violative of the rights of the appellant. (See *Hunter Company, Inc.* v. *McHugh, Commissioner of Conservation, et al.*, 320 U. S. 222.)

It therefore follows that the Supreme Court of the United States has no jurisdiction of the within matter at this time for the reason that there has been no final judgment within the meaning of Section 344 (a) of Title 28 U. S. Code.

II

The Supreme Court of the State of Oklahoma, in its decision involved herein, did not pass upon the validity of the state statutes involved with reference to questions involving the Constitution of the United States.

In its opinion herein, the Supreme Court of the State of Oklahoma said:

> "In the instant case the record discloses that both the 1913 and 1915 acts were enacted long prior to the time that Republic, a foreign corporation, obtained the privilege of conducting its business operations within the state, and engaged in such business and entered into its various contracts. Having entered into this state and obtained the privilege of conducting its business

operations therein when said laws were in full force and effect, it consented to be bound by such laws, and may not now complain that an order entered by the Commission within the scope of such laws is unconstitutional. Pierce Oil Corporation *v.* Phoenix Refining Co., 259 U. S. 125, 66 L. Ed. 855, 42 S. C. Reporter, 440."

In that case, the Supreme Court, passing upon a similar contention held:

"A claim so similar to the one we have here that the disposition of it should have been accepted as disposing of this case as dealt with by this court in pipeline cases, 234 U. S. 548, 561, in a single sentence, saying: 'So far as the statute contemplates future pipelines and prescribes conditions upon which they may be established there can be no doubt that it is valid.'

"There is nothing in the nature of such a constitutional right as is here asserted to prevent its being waived or the right to claim it barred, as other rights may be, by deliberate election or by conduct inconsistent with the assertion of such a right. Pierce *v.* Somerset Railway, 171 U. S. 651, 648; Wall *v.* Parrot Silver & Copper Co., 244 U. S. 407, 411."

It is thus seen that the Supreme Court of the State of Oklahoma did not pass upon the constitutionality of the State statutes involved insofar as the Federal Constitution is concerned, its decision being limited to the rule that the Republic Natural Gas Company has waived its right, by deliberate election or by conduct inconsistent with the assertion of such a right, to attack the validity of the state statutes involved as being in violation of the Federal Constitution.

The opinion of the Supreme Court of the State of Oklahoma did not decide in favor of the validity of the State statutes involved, insofar as the Federal Constitution is

concerned, within the meaning of the applicable statute, to-wit: Section 344 (a) of Title 48 U. S. Code.

In any event the question of whether or not the appellant, Republic Natural Gas Company, a corporation, has waived its right to assert that the state statutes involved are in violation of the Constitution of the United States, or is estopped to deny the validity of said statutes on such grounds is not a federal question, but is a state question. *Eustis* v. *Bolles*, 150 U. S. 361; *Gillis* v. *Stinchfield*, 159 U. S. 658; *Pierce* v. *Somerset Railway*, 171 U. S. 641; *Speed* v. *McCarthy*, 181 U. S. 269; *Beals* v. *Cone*, 188 U. S. 184; *Shepard* v. *Barron*, 194 U. S. 553; *Leonard* v. *Vicksburg, Shreveport and Pacific Railroad Company*, 198 U. S. 416; *Richardson Machinery Company* v. *Scott*, 276 U. S. 128.

It is thus seen that the Supreme Court of the State of Oklahoma did not pass upon the validity of the statutes of the State of Oklahoma involved, with reference to the Constitution of the United States, but held that the appellant, Republic Natural Gas Company, a corporation, by its acceptance of the laws of the State of Oklahoma and its course of conduct, had waived its right to contend that said statutes were in violation of the Constitution of the United States and that the question there involved of such waiver, or estoppel was not a federal question but a state question for which reason the Supreme Court of the United States does not have jurisdiction of this appeal.

III

The matters involved in this attempted appeal have been foreclosed by previous decisions of this Court.

It is well established rule of this court that matters which have been foreclosed by previous decisions of this court so

as to preclude further argument will not be considered. *City of Boston* v. *Jackson, Treasurer and Receiver General of the Commonwealth of Massachusetts*, 260 U. S. 309. Appellees respectfully submit that the questions involved in this attempted appeal have been so foreclosed by previous decisions as to be unsubstantial and to not need further argument;

(a) The proposition that so far as the statutes involved contemplate future pipe lines and prescribe conditions upon which they may be established are without doubt valid has been established clearly in *Pipe Line Cases*, 234 U. S. 541, 561, and *Pierce Oil Corporation* v. *Phoenix Refining Company*, 259 U. S. 125. The last cited case involved an appeal from a decision of the Supreme Court of the State of Oklahoma in the case of *Pierce Oil Corporation* v. *Phoenix Refining Company, et al.*, 190 Pac. 857. The opinion of the Supreme Court of Oklahoma in that case was concurred in by Justice Rainey, now one of the attorneys for appellant.

(b) The proposition that the appellant, by qualifying to do business in the State of Oklahoma, by accepting the laws of the said state at the time of its qualification to do business by accepting the privilege conferred by the statutes involved and by its deliberate election and conduct, has waived its right to attack and may not now successfully attack the statutes involved, has been fully and completely established in *Pipe Line Cases*, 234 U. S. 541, and *Pierce Oil Corporation* v. *Phoenix Refining Co.*, 259 U. S. 125. It is well to note that the last cited case had involved the construction of the Oklahoma Oil Pipe Line Statute, which provides that all who transport oil within the State of Oklahoma for compensation, hire or otherwise are common carriers.

In its jurisdictional statement, the appellant contends that this rule does not apply for the reason that the statutes involved have for the first time been applied in the instant case, and that no such interpretation had been placed upon the statute prior to the time that appellant qualified to do business in the state. An order identical in principle was involved in the case of *Oklahoma Natural Gas Co.* v. *Corporation Commission*, 216 Pac. 917, which was decided by the Supreme Court of Oklahoma on June 19, 1923, long prior to the time that appellant qualified to do business in the State of Oklahoma. The order of the Corporation Commission of the State of Oklahoma involved herein reflects that it had on numerous occasions made identical applications of the statutes involved prior to the time that appellant qualified to do business in the State of Oklahoma. The record reflects that appellant knew of the interpretation placed upon the statutes involved by the Corporation Commission of the State of Oklahoma when it qualified to do business in the State of Oklahoma (R. 270).

(c) That a state may provide conditions upon which a foreign corporation may be admitted to do business in the state and may require that a foreign corporation accept the provisions of such statutes before being admitted to do business in the state, and that such provisions when so accepted are not violative of the 14th Amendment has been fully and completely decided in *Washington, ex rel. Bond & Goodwin & Tucker, Inc.*, v. *Superior Court of Washington for Spokane County, et al.*, 289 U. S. 361.

(d) That the duly constituted authorities of a state may shut in an oil or gas well when such action is necessary to prevent waste or protect correlative rights has been established by this court in the case of *Ohio Oil Company* v. *Indiana*, 177 U. S. 190.

WHEREFORE, appellees pray that the Supreme Court of the United States refuse to assume jurisdiction of the attempted appeal herein and that the same be dismissed.

Respectfully submitted,

MAC Q. WILLIAMSON,
Attorney General of the State of Oklahoma,
By FRED HANSEN,
First Assistant Attorney General.
FLOYD GREEN,
Attorney for the Corporation Commission of the State of Oklahoma.
RICHARDSON, SHARTEL, COCHRAN & PRUET,
By EARL PRUET,
1133 First National Building,
Oklahoma City, Oklahoma,
Attorneys for Peerless Oil & Gas Company.